

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES
Subchapter QQ, Provider Network Contract Registration
28 TAC §§3.9801 – 3.9805

1. INTRODUCTION. The Texas Department of Insurance proposes adding Subchapter QQ and 28 TAC §§3.9801 – 3.9805 to implement Insurance Code Chapter 1458 enacted under Senate Bill 822, 83rd Legislature, 2013. These sections: (1) adopt by reference the Provider Network Contracting Entity Registration Form and the Provider Network Contracting Entity Exemption of Affiliates Form; (2) clarify certain filing requirements; (3) establish an initial registration fee; and (4) clarify the express authority requirement for contracts. The following discussion provides an overview of the proposed sections.

§3.9801. Definitions and General Provisions. This section incorporates the definitions established in Insurance Code Chapter 1458, including both general definitions under Insurance Code §1458.001 and the definition of a health benefit plan under Insurance Code §1458.002. The department has also defined terms used in Insurance Code Chapter 1458 in this proposal and provided clarification for some of the definitions.

The statutorily-defined term “affiliate” is clarified to include each person that is an affiliate under Insurance Code Chapter 823. The clarification is consistent with Insurance Code Chapter 1458 because the definition of affiliate under Insurance Code §1458.001(1) is the same as that used in Insurance Code §823.003(a). In addition, Insurance Code §1458.001(6) defines “person” as having the same meaning as Insurance Code §823.002, and Insurance Code §1458.055(a)(1) provides that the affiliate cannot be the subject to a disclaimer of affiliation under Chapter 823. This

clarification will assist persons required to comply with these rules by providing them with a known basis for determining if a person is an affiliate.

The department has defined “other provider network” and “subsidiary provider network” to clarify the type of information that must be submitted under Insurance Code §1458.055 and proposed §3.9803. The department defines “primary provider network” as a provider network that is not a subsidiary or other network, because Insurance Code §1458.055(a)(2) requires disclosure of all network relationships, not just subsidiary networks or other networks. These definitions achieve the statutory requirement for full disclosure.

The proposal clarifies three matters related to contracting entities in subsection (c). As provided in subsection (c)(1), “provider network contracting entity” has the same meaning as “contracting entity” in this subchapter. This definition is based on Insurance Code Chapter 1458, which refers to Provider Network Contract Arrangements and defines “contracting entity” to mean “a person who ...in the ordinary course of business establishes a provider network or networks for access by another party.”

Subsection (c)(2) clarifies that a person begins to act as a contracting entity when the person begins, enters into, or offers to enter into direct contracts with one or more providers for the delivery of health care services to covered individuals to create a provider network or networks to be accessed by another party. A contracting entity does not simply spring into existence after the provider contracts are signed and the person offers its provider network to other parties. It is the existence of the provider network contract, not the access by other parties, that triggers the rights and

responsibilities of a contracting entity under Insurance Code Chapter 1458, Subchapter C.

Subsection (c)(3) clarifies that access to a provider network or networks by another party includes access by an affiliate because, as it is defined in Insurance Code §1458.001, an affiliate is a separate person from the contracting entity. The affiliate controls, is controlled by, or is under common control with another person, which in this case is the contracting entity. This also clarifies that a contracting entity exists even if it only allows affiliates to access its provider network or networks and denies access to nonaffiliates.

§3.9802. Provider Network Contracting Entity Registration Form Filing

Required. The department believes the purpose of the filing requirements in Insurance Code §1458.051 and §1458.055 is the identification of provider network contracting entities and affiliates. This includes health maintenance organizations (HMOs) and other persons holding a certificate of authority issued by the department to engage in the business of insurance in this state, and other persons that operate as provider network contracting entities. The identification process involves filing either the registration form or the Exemption of Affiliates Form under Insurance Code §1458.051 and §1458.055, and proposed §3.9802 and §3.9803.

The department adopts the Provider Network Contracting Entity Registration Form by reference in subsection (a). The form is authorized under Insurance Code §1458.053. The disclosures required by the form are specified under Insurance Code §1458.052. Although authorized under Insurance Code §1458.052(a)(4), the proposed form does not require information in addition to the statutory disclosures.

Subsection (b) requires contracting entities not described in subsection (c) to submit the registration form and the required fee within 30 days of beginning to act as a contracting entity to comply with Insurance Code §1458.051(a) and §1458.054.

Subsection (c) describes contracting entities that must register under §3.9803.

Subsection (b) also provides a specific date that the filing requirement will become effective, allowing existing contracting entities a reasonable period to comply. The proposal currently sets that date as September 1, 2014, but the date is subject to change based on public comments on the proposal and the date these sections are adopted.

Under subsection (d), the proposal establishes a requirement that contracting entities filing under this section must report any changes to the information submitted in the Provider Network Contracting Entity Registration Form no later than the 30th day after the day the change takes effect. This requirement is necessary for the department to have current name and contact information for the contracting entity, which is required under Insurance Code §1458.052. A 30-day period for updating contact information should be reasonable for the contracting entity to perform this task.

Under subsection (e), the contracting entity must submit the Provider Network Contracting Entity Registration Form and subsequent change reports in a written or electronic format to the address the department will provide on the Provider Network Contracting Entity Registration Form. This is consistent with the requirement in Insurance Code §1548.053.

§3.9803. Provider Network Contracting Entity Exemption of Affiliates Form Filing Required. The department adopts the Provider Network Contracting Entity

Exemption of Affiliates Form by reference in subsection (a). The form is authorized under Insurance Code §1458.053. Insurance Code §1458.004 authorizes the commissioner to adopt rules to implement this chapter. Under this authority, the department proposes that each entity submitting the Provider Network Contracting Entity Exemption of Affiliates Form provide: (1) all names used by the provider network contracting entity, including any name under which the contracting entity intends to engage or has engaged in business in this state; (2) the mailing address and main telephone number of the contracting entity's headquarters; and (3) the name and telephone number of the contracting entity's primary contact for the department. These are the same disclosures required of contracting entities filing the Provider Network Contracting Entity Registration Form under §3.9802. In addition, the Provider Network Contracting Entity Exemption of Affiliates Form requires disclosure of the relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks. Subsection (c) specifies these disclosure requirements.

Subsection (b) requires an HMO or other person holding a certificate of authority issued by the department to engage in the business of insurance in this state to submit the Provider Network Contracting Entity Exemption of Affiliates Form in compliance with Insurance Code §1458.051(b). Insurance Code §1458.054 authorizes the department to establish a fee for the submission. The period for making the submission is necessary so that contracting entities will know when the action must be completed, and is reasonable based on the 30-day period established for other contracting entity registrants under Insurance Code §1458.051(a). Consistent with §3.9802(b), the

proposal will allow existing contracting entities a reasonable period to comply with the rule. As in §3.9802(b), the proposed compliance date is subject to change.

Subsection (c) specifies the information that must be disclosed to complete the Provider Network Contracting Entity Exemption of Affiliates Form and comply with Insurance Code §1458.051 and §1458.055.

Subsection (c)(1) provides that each contracting entity submitting the Provider Network Contracting Entity Exemption of Affiliates Form must list each affiliate of the contracting entity, or the contracting entity must state that it has no affiliates. Insurance Code §1458.051 and §1458.055 require this procedure. Insurance Code §1458.051(c) provides that a contracting entity submitting the filing required under Insurance Code §1458.051(c) must list its affiliates. Insurance Code §1458.055 provides that the commissioner will grant an exemption for the affiliates of the contracting entity. Because the exemption applies only to those affiliates that will access the contracting entity's network, the contracting entity must only list those affiliates that will need access. Insurance Code §§1458.051(b), 1458.051(c), and 1458.055 do not state that the filing requirement only applies to those contracting entities with affiliates.

A contracting entity is by definition a person who in the ordinary course of business establishes a provider network or networks for access by another party under Insurance Code §1458.001. The other party with provider network access is either an affiliate or a nonaffiliate. An authorized person who does not allow any other party access to its provider network is by definition not a contracting entity.

Insurance Code §1458.051(a) requires each contracting entity to register, except for an authorized person. The latter group of contracting entities must submit a filing

under Insurance Code §1458.051(b). This latter group is either an HMO or other person holding a certificate of authority that allows access to its provider network or networks by an affiliate or nonaffiliate, including a third party administrator that holds a certificate of authority under Insurance Code §4151.051. Insurance Code §1458.051(b) does not allow a contracting entity that is an authorized person to not identify itself simply because it does not allow an affiliate access to its provider network.

To comply with the disclosure requirement under §1458.055, subsection (c)(2) describes the provider network contracting relationships between the person who holds a certificate of authority and all affiliates of the person that must be disclosed. Subsection (c)(2) provides that the contracting entity must also disclose if it or an affiliate allows nonaffiliate third parties to use one or more of the disclosed networks. The disclosure must state whether the contracting entity or the affiliate provided access to a third party.

Subsection (d) provides that the commissioner must grant the exemption required under Insurance Code §1458.054(b) in writing before the exemption will be effective. Subsection (e) establishes the date for the annual update of the list of the contracting entities' affiliates under Insurance Code §1458.051(c) and the requirement to annually update the submitted information. Under subsection (e), the contracting entity must submit the Provider Network Contracting Entity Registration Form and subsequent change reports in a written or electronic format to the address the department will provide in the Provider Network Contracting Entity Registration Form. This is consistent with the requirement in Insurance Code §1458.053

§3.9804. Required Fees. This section establishes a fee of \$1,000 for filing a Provider Network Contracting Entity Registration Form under §3.9802 or a Provider Network Contracting Entity Exemption of Affiliates Form under §3.9803. The contracting entity must submit the registration fee for the Provider Network Contracting Entity Exemption of Affiliates Form even if the contracting entity has no affiliates. Fees are not required for updating filings, including a filing that lists new affiliates for a previously filed Provider Network Contracting Entity Exemption of Affiliates Form.

§3.9805. Express Authority. Subsection (a) provides that the providers' express authority may not be presumed except as described in this section. That exception restates Section 2(b) of SB 822. The department restates the exemption because, as enacting language, the exception will not always be published with the statutory provisions of Insurance Code Chapter 1458. Section 3.9805(b) requires the contracting entity to notify the provider about all applicable fee schedules. The requirements are consistent with Insurance Code §1458.101(b) and do not limit the means of obtaining the provider's express authority or the contracting entity's ability to establish contractual requirements.

2. FISCAL NOTE. Debra Diaz-Lara, director of the Managed Care Quality Assurance Office, Financial Regulation Division, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Diaz-Lara has determined that for each year of the first five years the proposed sections are in effect, there will be public benefits resulting from the proposal and there will be costs to persons required to comply with the proposal.

Anticipated public benefits. The department anticipates that a primary public benefit resulting from the proposal will be the implementation of SB 822 and the identification of contracting entities and provider networks doing business in this state as required in that legislation.

Estimated costs for persons required to comply with the proposal. The proposal establishes a registration fee, and requirements to update the submitted information, which will result in costs to contracting entities.

Insurance Code §1458.053 requires the commissioner to set a reasonable fee administering the registration program. The fee is set at \$1,000 in proposed §3.9804 for both the initial registration submission under Insurance Code §1458.051(a) and the initial exemption submission under Insurance Code §1458.051(b). As previously stated, the department considers both the registration submission and the exemption submission to be part of the registration program required under Insurance Code Chapter 1458.

The amount of the fee is based on the resources the department has expended for similar compliance activities over the course of many years and the knowledge that this will be a one-time fee for each contracting entity. Based on that prior experience, the department anticipates that it will be reasonably necessary for department staff

directly administering the registration program to receive submissions, review submissions for completeness, enter or record data, respond to inquiries, and perform general administrative tasks. The department will also maintain the registration database and access it for complaint handling, examinations, and inquiries. This will involve management staff from the department's Managed Care Quality Assurance Office and support staff from the department's information technology, administrative, legal, and enforcement divisions. Further, the department uses electronic databases to maintain the records, which have significant costs.

Though the department has identified factors attributable to the administrative cost of this program, it cannot estimate the total fiscal year cost because of several nonquantifiable cost factors, including the unknown actual number of contracting entities and the unknown amount of work that will result from implementing Insurance Code Chapter 1458 in this and future years.

The cost for contracting entities will vary for many reasons, including size, structure, and whether it is an authorized person. While it is not feasible to determine the actual cost of each activity for all contracting entities, the department has provided factors that will generate costs under this proposal.

The department estimates certain personnel costs described in this proposal. The contracting entity may choose to prepare the disclosure using its employees or third party contractors. The department anticipates compliance would involve administrative, management, and legal personnel. It is not feasible for the department to determine the actual employee costs for all contracting entities. However, the United States Department of Labor, Bureau of Labor Statistics' *May 2012, Occupational*

Employment Statistics report indicates that the hourly mean wages for the professions in Texas, as referenced in this cost analysis, are \$26.15 for office and administrative workers (www.bls.gov/oes/CURRENT/oes431011.htm), \$56.85 for general and operations managers (www.bls.gov/oes/CURRENT/oes111021.htm), and \$64.52 for lawyers (www.bls.gov/oes/current/oes231011.htm). It is not feasible for the department to estimate the cost to contracting entities for hiring contract labor to fulfill these roles. The method of compliance and ultimate cost of compliance is a business decision of the contracting entity, not a requirement of this proposal.

The costs for the initial filing requirements under proposed §3.9802 or §3.9803 are imposed by statute, not a result of this proposal, because Insurance Code §1458.051 requires contracting entities to make an initial filing of information. The information required for the filing under proposed §3.9802 is limited to the information required under Insurance Code §1458.051. The requirement for disclosure of provider network information under proposed §3.9803 is from Insurance Code §1458.051 and §1458.055. The statutory disclosure requirement may result in significant costs and require administrative workers, operations management, and professional legal resources to complete.

The additional requirement in §3.9803 for the contracting entity to supply identifying and contact information should not result in additional costs because the information is already known to the contracting entity and the contracting entity is already required to make the submission. Providing this information would reasonably be expected to be included with a submission even if it were not required by §3.9803. Insurance Code §1458.053 requires submissions under Insurance Code §1458.051 to

be submitted in a written or electronic format. Section 3.9802(e) and §3.9803(f) provide the address for the required filing and do not create a cost for submitting the required filing.

The requirement to provide updated information under §3.9802 and §3.9803 does not create an additional cost, because the department considers that the requirement to register with the department includes the requirement to update the registration information when it changes. Even if update submission requirements under §3.9802 and §3.9803 were determined to result in additional costs, the costs of updating the contracting entity's contact information would be minimal. This information is readily available to the contracting entity and existing administrative and managerial personnel could prepare the information to submit to the department—which is likely within the scope of ordinary duties performed by those individuals.

An update to the provider network disclosures beyond the requirement to annually update the list of affiliates under Insurance Code §1458.051, if necessary, may result in additional costs due to the need for additional administrative, managerial, and legal resources to complete the update. Because the cost would vary based on the extent of the update and the contracting entity's method of employing or contracting for necessary staff, it is not feasible for the department to determine the actual employee costs for all contracting entities. The method of compliance and ultimate cost of compliance is a business decision of the contracting entity, not a requirement of this proposal.

The department estimates the cost of making an electronic submission to be minimal and impossible to reasonably estimate. The department estimates the cost of

a mail submission to be less than \$5 in aggregate for postage, envelope, paper, and mail preparation.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines a “micro business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees.

In accord with Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic impact on small and micro businesses because they are required to pay the registration fee and provide updates to their initial filing. The department does not know the total number of persons affected by the proposal or the number that will be small or micro businesses under Government Code §2006.002(c), because contracting entities that are not HMOs or other entities holding a certificate of authority have not previously been required to identify

themselves to the department. The department anticipates that the majority of the entities that will register under §3.9802 will be small or micro businesses under Government Code §2006.002(c).

The specific registration costs to small and micro businesses are in the Public Benefit/Cost Note part of this proposal. The department, in accord with Government Code §2006.002(c-1), has considered two alternative methods of achieving the purpose of the proposed rule that would not adversely affect small or micro businesses: either reduce or eliminate the registration fee for small and micro businesses, or exempt small and micro businesses from submitting the required registration or updates. The department has determined that adopting either of these alternatives for small and micro businesses is neither legal nor reasonable.

Insurance Code §1458.054 requires the commissioner to establish a reasonable fee to administer the registration process. The statute does not direct the department to vary the fee by type or size of the contracting entity. The registration process will require department staff directly administering the registration program to receive submissions, review submissions for completeness, enter or record data, respond to inquiries, and perform general administrative tasks.

The department does not anticipate that its per-contracting entity costs of performing the department's functions under Insurance Code Chapter 1458 will bear a direct relationship to the number of employees a contracting entity has. Eliminating the registration fee for small or micro businesses would burden the remaining contracting entities, who would bear the full cost of the program even though they may not necessarily account for a greater portion of the program costs to the department.

Based on these considerations, the department has determined that requiring a single registration fee for all contracting entities is reasonable and complies with the intent of the statute.

Insurance Code §1458.051 requires contracting entities to submit the required form and provide certain disclosures. The statute makes no exception from this requirement for small or micro businesses. The department considers a primary purpose of Insurance Code Chapter 1458 is to identify contracting entities. Updates to the initial filing will include providing current contact information, maintaining a list of affiliates, and disclosing the contracting entity's networks as required under Insurance Code §1458.055. Creating an exemption for small or micro businesses to make an initial filing or to update that information is also not reasonable because the exemption would be contrary to the purpose of identifying contracting entities. Based on these considerations, the department has determined that requiring all contracting entities to make an initial filing and to update that information is reasonable and complies with the intent of the statute.

5. TAKINGS IMPACT ASSESSMENT. The department has determined that this proposal affects no private real property interests and it does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposed sections must be submitted no later than 5:00 p.m., Central time, on July 16, 2014. You may send your comments electronically to the chief clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of your comments by email to MCQA@tdi.texas.gov, or by mail to Ms. Debra Diaz-Lara, Director Managed Care Quality Assurance Office, Financial Regulation Division, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed sections in a public hearing under Docket No. 2768 scheduled for 9:00 a.m., Central time, on July 16, 2014, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The commissioner will consider written comments and public testimony presented at the hearing.

7. STATUTORY AUTHORITY. The department proposes the sections under Insurance Code §§1458.004, 1458.052, 1458.053, 1458.054, 1458.055, 1458.101, and 36.001. Insurance Code §1458.004 authorizes the commissioner to adopt rules to implement this chapter.

Insurance Code §1458.051(a) requires contracting entities, except as provided in Insurance Code §1458.051(a), to register with the department not later than the 30th day after the date the person begins acting as a contracting entity in this state.

Insurance Code §1458.051(b) requires a contracting entity that is an authorized person

to file with the commissioner an application for exemption from registration under which the contracting entity's affiliates may access the contracting entity's network. Insurance Code §1458.051(c) requires a contracting entity submitting a form under Insurance Code §1458.051(b) to list its affiliates and update the list on an annual basis.

Insurance Code §1458.052 lists the information that must be disclosed by a contracting entity. Insurance Code §1458.053 allows information to be submitted in a written or electronic format. Insurance Code §1458.054 authorizes the commissioner to set a reasonable fee necessary to administer the registration process. Insurance Code §1458.101 establishes the requirement for obtaining the provider's express authority in provider network contracts. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

Sections 3.9801 – 3.9805 implement and affect Insurance Code, Chapter 1458, including §§1458.001, 1458.051 – 1458.055, and 1458.101.

9. TEXT

Subchapter QQ. Provider Network Contract Registration

§3.9801. Definitions and General Provisions.

(a) Terms in this subchapter have the same meaning as defined and used in Insurance Code Chapter 1458.

(b) The following words and terms when used in this subchapter have the following meanings unless the context clearly indicates otherwise:

(1) Affiliate--Includes each person that is an affiliate under Insurance Code Chapter 823.

(2) Primary provider network--A provider network that is not a subsidiary or other network.

(3) Other provider network--A primary or subsidiary provider network created by a nonaffiliated contracting entity.

(4) Subsidiary provider network--A network that is used for specific limited coverages, provider types, or geographic regions, including a subsidiary network created by a health maintenance organization or other entity holding a certificate of authority issued by the department to engage in the business of insurance in this state or an affiliate of such an entity.

(c) In this subchapter:

(1) the term “provider network contracting entity” has the same meaning as contracting entity;

(2) a person begins acting as a contracting entity in this state when the person enters into or offers to enter into direct contracts with one or more providers for the delivery of health care services to covered individuals that serves to create a provider network or networks to be accessed by another party; and

(3) access to a provider network or networks by another party includes access by an affiliate.

§3.9802. Provider Network Contracting Entity Registration Form Filing Required.

(a) The department adopts the Provider Network Contracting Entity Registration Form by reference.

(b) Except as provided in subsection (c) of this section, each person operating as a contracting entity must submit to the department a fully completed Provider Network Contracting Entity Registration Form with the required fee established under §3.9804 of this title (relating to Required Fees) before the later of:

(1) the 30th day after the date on which the person begins acting as a contracting entity in this state; or

(2) September 1, 2014.

(c) The following contracting entities are not required to register under this section:

(1) a health maintenance organization holding a certificate of authority issued by the department to engage in the business of insurance in this state;

(2) an entity holding a certificate of authority issued by the department to engage in the business of insurance in this state; or

(3) a named affiliate on the Provider Network Contracting Entity Exemption of Affiliates Form filed under §3.9803 of this title (relating to Provider Network Contracting Entity Exemption of Affiliates Form Filing Required).

(d) A contracting entity registered under this section must report any changes to the information submitted in the Provider Network Contracting Entity Registration Form submitted under subsection (b) of this section not later than the 30th day after the date on which the change takes effect.

(e) The contracting entity must submit the Provider Network Contracting Entity Registration Form and subsequent change reports in a written or electronic format at the address the department will provide on the Provider Network Contracting Entity Registration Form.

§3.9803. Provider Network Contracting Entity Exemption of Affiliates Form Filing Required.

(a) The department adopts the Provider Network Contracting Entity Exemption of Affiliates Form by reference.

(b) Each contracting entity that is a health maintenance organization or other entity holding a certificate of authority issued by the department to engage in the business of insurance in this state must submit to the department a fully completed Provider Network Contracting Entity Exemption of Affiliates Form and the required fee established under §3.9804 of this title (relating to Required Fees) before the later of:

(1) the 30th day after the date on which the submitting person begins acting as a contracting entity in this state; or

(2) September 1, 2014.

(c) The person submitting the Provider Network Contracting Entity Exemption of Affiliates Form must:

(1) list each affiliate of the contracting entity or state that the contracting entity has no affiliates;

(2) disclose the provider network contracting relationships between the person who holds a certificate of authority and all affiliates of the person, including:

(A) primary provider networks and the affiliates that have access to the network;

(B) subsidiary provider networks and the affiliates that have access to the network; and

(C) other provider networks and the affiliates that have access to the network;

(3) disclose if the contracting entity or an affiliate allows a nonaffiliate to access any network of the contracting entity or affiliate and the name of the contracting entity or affiliate allowing such access.

(d) An affiliate exemption under this section is not effective until the commissioner grants the exemption in writing. The commissioner may grant the requested exemption to all listed affiliates, grant the exemption to some listed affiliates, or deny the requested exemption.

(e) Not later than January 31 of each year, a contracting entity that has filed the Provider Network Contracting Entity Exemption of Affiliates Form under this section must report to the commissioner any changes to the information the contracting entity provided in its Provider Network Contracting Entity Exemption of Affiliates Form or subsequent annual reports, including the addition or removal of any affiliates.

(f) A contracting entity must submit the Provider Network Contracting Entity Exemption of Affiliates Form and subsequent annual reports in a written or electronic format to the address the department will provide on the Provider Network Contracting Entity Exemption of Affiliates Form.

§3.9804. Required Fees.

(a) A Provider Network Contracting Entity Registration Form under §3.9802 of this title (relating to Provider Network Contracting Entity Registration Form Filing Required) or a Provider Network Contracting Entity Exemption of Affiliates Form under §3.9803 of this title (relating to Provider Network Contracting Entity Exemption of Affiliates Form Filing Required) must be accompanied by the required fee of \$1,000.

(b) No fee is required for submitting a change in information under §3.9802 of this title or the annual registration update under §3.9803 of this title.

§3.9805. Express Authority.

(a) Except as provided in subsection (c) of this section, the grant of express authority of a provider for access to their negotiated fee schedules cannot be presumed for any line of business for the purposes of compliance with Insurance Code §1458.101.

(b) The contracting entity must notify the provider about all applicable fee schedules; but such notification is not to be, and must not be, construed as:

(1) prohibiting a provider network contracting entity from only contracting with providers who agree to all fee schedules; or

(2) requiring providers to agree to all fee schedules.

(c) For the purposes of compliance with Insurance Code §1458.101, a provider's express authority is presumed if:

(1) the provider network contract is in existence before September 1, 2013;

(2) on the first renewal after September 1, 2013, the contracting entity sends a written renewal notice by United States mail to the provider;

(3) the notice described by paragraph (2) of this subsection:

(A) contains a statement that failure to timely respond serves as assent to the renewal;

(B) contains separate signature lines for each line of business applicable to the contract; and

(C) specifies the separate fee schedule for each line of business applicable to the contract, described in any reasonable manner and which may be provided electronically; and

(4) the provider fails to respond within 60 days of receipt of the notice and has not objected to the renewal.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas on June 2, 2014.



Sara Waitt
General Counsel
Texas Department of Insurance